IN THE SUPREME COURT OF THE STATE OF UTAH

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Piper C. Joos,
Plaintiff and Respondent,

v.

Dan Rodney Joos,
Defendant and Petitioner.

No. 970542
960720-CA
954904707-DA

The Petition for Writ of Certiorari is denied.

2/23/98

/S/
Michael D. Zimmerman
Chief Justice

For The Court

FILED
Utah Court of Appeals
OCT 17 1997
Julia D'Alesandro
Clerk of the Court

IN THE UTAH COURT OF APPEALS

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Piper C. Joos, Plaintiff and Appellee, v. Dan Rodney Joos, Defendant and Appellant.	ORDER Case No. 960720-CA

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This matter is before the court upon appellant's petition for rehearing, filed October 9, 1997.

IT IS HEREBY ORDERED that the petition for rehearing is denied.

Dated this 17th day of October, 1997.

FOR THE COURT:

/S/
Pamela T. Greenwood, Judge

FILED
SEP 25 1997
COURT OF APPEALS

IN THE UTAH COURT OF APPEALS
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Piper C. Joos,	MEMORANDUM DECISION
	(Not For
Plaintiff and Appellee,	Official Publication)
v.	Case No. 960720-CA
Dan Rodney Joos,	
	FILED
Defendant and Appellant.	(September 25, 1997)

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Third District, Salt Lake Department, Div. I
The Honorable Sandra Peuhler

Attorneys: Dan Rodney Joos, Salt Lake City,
Appellant Pro Se
Ephraim Fankhauser, Salt Lake City,
for Appellee

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Before Judges Davis, Billings, and Greenwood.

BILLINGS, Judge:

Dan Rodney Joos appeals the trial court's order granting a decree of divorce on grounds of irreconcilable differences. Specifically, appellant argues the trial court erred in failing to grant his petition for conciliation, that there was insufficient evidence to support the trial court's finding of irreconcilable

differences, and that Utah Code Ann. §30-3-1(3)(h) (1995) (making irreconcilable differences a ground for divorce) is unconstitutional. We affirm.

Appellant first claims the trial court erred in failing to grant appellant's petition for conciliation. Utah Code Ann. §30-3-16.7 (1995) provides for a sixty day stay of a pending divorce action when a petition for conciliation is filed, "unless the court otherwise orders." This language is clearly discretionary, and hence we can overturn the trial court's decision only if we find it was an abuse of discretion. Appellant has not shown the trial court abused its discretion. Accordingly, we conclude the trial court properly refused to grant appellant's petition for reconciliation.

Appellant next argues that there was insufficient evidence to support the trial court's finding of irreconcilable differences. In reviewing a sufficiency of the evidence claim, we may overturn a trial court's decision only if we conclude that decision was clearly erroneous. See Tucker v. Tucker, 910 P.2d 1209, 1214 (1996). After carefully reviewing the record, we conclude there was sufficient evidence to support the trial court's finding of irreconcilable differences.

Finally, appellant claims that Utah Code Ann. § 30-3-1 (3) (h) (1995), allowing divorces to be granted in cases of irreconcilable differences, is unconstitutional. This issue was not raised before the trial court. Thus, the issue was not preserved for appeal. See Ong Int'l (U.S.A.). Inc. v. 11th Ave. Corp., 850

P.2d 447, 455 (Utah 1993)

The decision of the trial court is affirmed.

/s/
Judith M. Billings, Judge

/s/
James Z. Davis,
Presiding Judge

/s/
Pamela T. Greenwood, Judge

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

PIPER C. JOOS,	*	2211091 10-28-96 - 8:12 a.m.
Plaintiff,	*	DECREE OF DIVORCE
vs.	*	Civil No. 954904707 DA
DAN RODNEY JOOS,	*	Judge Sandra N. Peuler
Defendant.	*	

Trial of this matter was held at a regular term of the above entitled Court, sitting without jury, on September 6, 1996, before the Honorable Sandra N. Peuler, District Judge. Plaintiff appeared in person and was represented by her attorney, Ephraim H. Fankhauser. Defendant appeared in person and was represented by his attorney, Ronald C. Barker. The parties were sworn,, testified and presented evidence to the Court. The matter was argued and submitted to the Court for decision. The Court, having made and entered its Findings of Fact and Conclusions of Law, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiff, PIPER C. JOOS, is hereby awarded a Decree of Divorce from the Defendant, DAN RODNEY JOOS, upon the grounds of irreconcilable differences and this Decree of Divorce is to become final on signing and entry.

2. Plaintiff is awarded the care, custody and control of the parties three (3) minor children, to-wit: ANTHONY, age 17 (8/14/79), AARON, age 15 (4/10/81) and ALEXANDER, age 7, (6/6/89), subject to reasonable and liberal visitation rights on behalf of Defendant, consistent with the minimum standard visitation schedule, set forth in Section 30-3-35, U.C.A. Amended. Defendant is to have suitable and adequate sleeping accommodations for the children, a telephone where the children can be contacted during visitation and to transport the children in a safe vehicle.

3. Defendant is ordered to pay to Plaintiff as child support for the support of the three (3) minor children, $664.00 per month commencing September 1, 1996 and each and every month thereafter, until each child shall reach age of majority and graduate from high school with their usual expected class, the last to occur. Child support is to be automatically adjusted at the time each child graduates and has attained age 18, consistent with 78-45-7.10, U.C.A. Amended.

4. Defendant is ordered to pay to Plaintiff as permanent alimony, the sum of $150.00 per month. Child support and alimony are due and payable one half (1/2) on or before the 5th of each month and one-half (1/2) on or before the 20th of each month. Alimony is to terminate at the time Plaintiff remarries, or unlawfully cohabitates, or 18 years from the date of entry of this Decree of Divorce, or on the death of either party, the event that is first to occur.

5. Income withholding relief is to be implemented pursuant to Section 62A-11-403, et. seq., Utah Code Annotated.

6. Should either party incur work related day care expenses for any of the minor children, it is reasonable that each party be required to pay one-half (1/2) of any actual work related day care expenses consistent with Section 78-45-7.16 and 7.17, Utah Code Annotated, Amended. Work related day care expenses are to be paid monthly in addition to child support.

7. Each party is ordered to obtain medical and dental insurance coverage, if available through their employment, when it becomes available, at reasonable cost, for the benefit of the minor children during their period of minority. Each party shall be responsible to pay one-half (1/2) of the actual out of pocket premium cost of maintaining medical and dental insurance coverage for the minor children and one-half (1/2) of all deductibles and noncovered hospital, medical, dental and optical expenses of the minor children through age of majority and graduation from high school with their expected class, the last to occur.

8. Plaintiff is hereby awarded the marital home located at 7048 Chula Drive, West Valley City, Utah, subject to an equity lien in the amount of $47,500.00, representing one-half (1/2) of the present value, in favor of Defendant. Defendant's equity lien shall be a non-interest bearing lien and is to be due and payable at the time Plaintiff remarries, or unlawfully cohabitates, or sells the home, or moves from the residence, or at the time the youngest child reaches age 18 and has graduated from high school, or the death of Plaintiff, the event first to occur. Defendant's request that Plaintiff be ordered to refinance the home and pay out his equity interest is denied, together with his request that Plaintiff be ordered to pay rent to Defendant for the home. Defendant is ordered to execute a proper Quit Claim Deed, quit claiming all interest in the home to Plaintiff, subject to his equity lien, consistent with this Decree of Divorce.

9. Plaintiff is ordered to assume and pay, and hold Defendant harmless, from the following debts and obligations, to-wit: One-half (1/2) of the present balance of the debts owing to West One and Hospital Acceptance; the First Security Bank van loan; together with the debts and obligations she has incurred individually since separation.

10. Defendant is ordered to assume and pay, and hold Defendant

harmless, from the following debts and obligations, to-wit: One-half (1/2) of the present balance of the debts owing to West One and Hospital Acceptance; the America First Credit Union personal loan; together with the debts that he has incurred individually since separation.

11. Plaintiff is awarded as her sole and separate property, free and clear of all claims of the Defendant, the 1992 Ford van, subject to the indebtedness owing to First Security Bank, which she is to assume and pay, all of the furniture, appliances and personal property items set forth in the Schedule that was attached to Plaintiff's Exhibit 7, a copy of which is attached hereto and marked Exhibit "A," including and not limited to, the marital personal property, pre-marital and gifted property, all items of personal property in her possession, not awarded to Defendant, her personal clothing, jewelry and effects.

12. Defendant be and is hereby awarded as his sole and separate property, free and clear of all claims of Plaintiff, the 1991 Ford Fairmont, 1978 Cadillac Eldorado, the items of personal property set forth in the Schedule attached hereto and marked Exhibit "A," including and not limited to, furniture, appliances, pre-marital and gifted property, together with all personal property presently in possession of Defendant, his personal clothing, jewelry and effects.

13. The grand piano is hereby awarded to the Plaintiff, with one-half (1/2) the value to be awarded to Defendant. The piano is to be appraised by a mutually agreeable appraiser, and each party ordered to pay one-half (1/2) the cost. Defendant's one-half (1/2) of the value of the piano is to be added to his home equity lien, and be payable when the lien shall become due.

14. Defendant is awarded the right to claim two (2) of the minor children as exemptions for tax purposes, Anthony and Alexander, conditioned upon child support being current each year end, consistent with 78-45-7.21, U.C.A. Amended. Plaintiff is awarded the right to

claim the minor child, Aaron, as an exemption for Federal and State income tax purposes.

15. Defendant is awarded the continued ownership of the children's life insurance policies. Defendant is ordered to continue to pay the premiums on each of said policies and not cash in any of the policies unless it is mutually agreed to by both parties. At the time each child reaches age 21, each child is to receive his insurance policy, in keeping with the expressed intention of the Defendant and the reason and purpose the policies were originally purchased. As long as Defendant maintains the children's life insurance policies, he will not be required to maintain a separate policy on his life for the benefit of the minor children. In the event that the parties mutually agree that the children's policies should be canceled, cashed in or otherwise discontinued, Defendant is ordered to obtain a life insurance policy on his life of a minimum of $50,000.00 for the benefit of the minor children and name all three (3) children as equal primary beneficiaries and the Plaintiff as secondary beneficiary, until Defendant's obligation to pay child support and alimony terminates.

16. The retirement annuity of Defendant, accumulated during the marriage with Pioneer Distributing, a Division of Anderson Lumber Company, is ordered divided equally between the parties. A Qualified Domestic Relations Order is to issue in favor of Plaintiff for her one-half (1/2) interest in the retirement annuity.

17. Defendant is ordered to pay to Plaintiff, and Plaintiff is hereby awarded a judgment in the sum of $4,385.00 as attorney's fees, together with her costs incurred in this action, assessed at $171.00. The judgment for attorney's fees and costs shall bear interest at the judgment rate of 7.22 percent per annum until paid in full.

DONE IN OPEN COURT this 22 day of October, 1996.

BY THE COURT:

/s/
SANDRA N. PEULER
DISTRICT JUDGE

MAILING CERTIFICATE

I certify a true and correct copy of the foregoing was mailed to Ronald C. Barker, Attorney for Defendant, 2870 South State Street, Salt Lake City, Utah 84115, pursuant to Rule 4-504(2), Code of Judicial Administration, on this 12th day of September, 1996.

/s/

JOOS V. JOOS

PLAINTIFF'S PROPOSED DIVISION OF
MARITAL PERSONAL PROPERTY

I. (A) MARITAL PROPERTY TO BE AWARDED PLAINTIFF:

	Est. Value
1 Bed	20.00
5 Bar Stools	20.00
1 Chair (bought at DI)	5.00
1 Table (bought at DI - Pltf refinished)	15.00
1 Dining room table	100.00
2 Chairs (bought at DI)	17.00
1 Lamp	2.00
1 Chair (bought at DI)	5.00
1 Lamp (bought at DI)	10.00
1 End table (bought at DI)	5.00
Dresser w/ mirror	100.00
1 Small filing cabinet	5.00
Washer	200.00
Dryer	25.00
Refrigerator	25.00
Drill press	45.00
Circular saw	35.00
1 Electric drill	20.00
1 Tool box	20.00
Miscellaneous small tools	400.00
3 Ladders (metal)	150.00
Weed eater	20.00
TOTAL	$ 1,244.00

(B) PLAINTIFF'S PRE-MARITAL AND GIFTED PROPERTY

	No Value Assessed
Yard Furniture (Dan)	
2 Filing Cabinets (Dan)	
Desk (Pltf's before marriage)	
	$ 0

(C) PROPERTY GIFTED FROM PLAINTIFF'S MOTHER

	No Value Assessed
1 Couch	
4 End tables	
Ceder chest	
1 Love Seat	
2 Lamps	
1 Curio Cabinet	
5 Dining chairs	
Mantle	
1 Rocker	
2 Children's desks	
1 Bed headboard/canopy	
1 Dresser - white	
China, Crystal, Silverware, dishes	
	$ 0

II. (A) MARITAL PROPERTY TO BE AWARDED DEFENDANT

	Est. Value
Freezer	100.00
2 End tables - yellow	10.00
Picnic table	30.00
1 Couch - brown	20.00
1 Chair - brown	10.00
3 Chairs - round	30.00
Ping pong Table	25.00
Bedding (2 sets sheets, 1 bedspread, 2 blankets)	No Value
Linens (3 towels, dish towels dish cloths)	5.00
Set of pans (brown & yellow)	10.00
Cooking pans & utensils (2 pie pans, 1 cookie sheet, 2 Tupperware bowls)	5.00
Silverware (1 set stainless 6 pc)	5.00
1 Set dishes and cups; misc. cups	5.00
Hand tools (1 set screwdrivers, saw, hammer, pliers)	20.00
1 Tool box (3 drawer - red)	20.00

Garden and yard tools (1 shovel, 1 rake, snow shovel)	15.00
Wood burning stove (new)	500.00
Laminate Trimmer	25.00
Belt Sander (Def's value)	400.00
Misc. property - shed	150.00
1 Metal ladder - 5 ft.	50.00
1 Wood ladder - 5 ft.	20.00
TOTAL	$ 1,465.00

(B) DEFENDANT'S GIFTED PROPERTY

Wedding quilt	No Value Assessed